Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Southwest Regional Office, and at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis or Daniel Viele, 310–980–4030.

SUPPLEMENTARY INFORMATION: Sacramento River winter chinook was listed under the Endangered Species Act (ESA) in 1989. In response to continuing and dangerously low abundance of winter chinook, NMFS issued a March 8, 1996, biological opinion (revised April 5, 1996) which required that ocean fishery impacts on winter chinook be reduced to the extent that winter chinook spawning escapement would be increased by 35 percent compared to current levels. The 1996 ocean salmon management measures (61 FR 20175, May 6, 1996) recommended by the Pacific Fishery Management Council (Council) and approved and implemented by NMFS meet the requirements of the biological opinion through a combination of season reductions and increased minimum size limits.

The State of California acted in late April to conform its commercial and recreational fishing regulations to the Council's recommended management measures. On May 1, 1996, the Commission, which regulates the recreational salmon fishery within state waters, announced its intent to consider delaying implementation of the July 2 increase in the minimum size limit south of Point Arena for recreationally caught chinook until August 26.

The Council considered the Commission's proposed action at its June 18–19 meeting in Seattle, WA. NMFS informed the Council that any state actions resulting in an increase in winter chinook impacts would trigger inseason action by NMFS to ensure the requirements of the biological opinion would continue to be met. NMFS urged the Council to recommend adjustments to the fishing seasons in the EEZ, which would result in ocean salmon fisheries operating within the constraints of the biological opinion, should the Commission delay implementation of the July 2 minimum size limit increase. Despite advice from its Salmon Technical Team (STT) that the decrease in winter chinook spawning escapement resulting from the proposed delay would not meet ESA requirements, the Council, at its June 18–19 meeting, recommended that NMFS delay the minimum size limit increase in Federal waters as well. The Council further advised NMFS to constrain any Federal regulatory adjustments stemming from the Commission's actions to the California recreational fishery.

On June 21, the Commission approved a July 15, 1996, date for the increase in the minimum size limit for chinook in the recreational salmon fishery south of Point Arena. A preliminary analysis by the STT indicates that the difference between the winter chinook spawning escapement increase expected under the NMFS approved and implemented management measures and the Commission's delay to July 15 would be 0.7 percent. Although small, this difference results in winter chinook impacts that do not meet the requirement of the biological opinion to increase winter chinook spawning escapement by 35 percent.

NMFS has taken this inseason action to close the recreational fishery in the EEZ during the same time period that the Commission has delayed the increase in the minimum size limit in state waters. Differing size limits in Federal and state waters are considered to be unenforceable. Analysis of how to compensate in the EEZ for the 2-week delay is made difficult by the lack of data partitioning recreational effort between the EEZ and state waters, and an inability to predict the portion of the recreational effort normally occurring in the EEZ that will shift to state waters as a result of an EEZ closure. Data for the commercial troll fishery off California in 1983 and 1984 indicate 67 percent of the catch occurred in the EEZ. However, there is no reason to assume a similar distribution of the recreational effort. Officials at the California Department of Fish and Game estimate that perhaps 70 percent of the recreational effort in July may occur inside state waters. If it is assumed that 30 percent of the recreational fishing effort occurs in the EEZ and that no effort shift will result from an EEZ closure, a 2-week closure of the EEZ to recreational fishing in July would approximately compensate for the winter chinook impacts caused by the 2-week delay in the minimum size limit in state waters, according to the Winter Chinook Ocean Harvest Model. Based on that analysis, NMFS expects that with this 2-week closure the ocean fisheries will continue to meet the requirements of the biological opinion. If, however, further analysis by the STT should indicate that additional adjustments are required, NMFS will consider further closures to salmon fisheries in the EEZ.

The Regional Director consulted with representatives of the Council and the California Department of Fish and Game. Because of the need for immediate action, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17010 Filed 6–28–96; 4:20 pm]

BILLING CODE 3510–22–F

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50 CFR Part 681 and 15 CFR Part 902

[Docket No. 960401094–6183–02; I.D. 022296D]

RIN 0648–AI32

Western Pacific Crustacean Fisheries; Amendment 9; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 9 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This rule establishes a new annual harvest limitation program for the Northwestern Hawaiian Islands (NWHI) lobster fishery based on the status of stocks and an explicit level of risk of overfishing. This eliminates operational problems with the current quota system. Current prohibitions on retaining juvenile lobsters and berried lobsters are eliminated. The rule establishes framework procedures to implement regulatory changes if needed in the future. This rule also announces the harvest guideline for the 1996 fishing season. The rule is intended to maintain the productivity of the stocks while providing a reasonable opportunity for permit holders to participate in the fishery and to maintain their markets. The changes also improve the administration of the

management program and enforcement efforts.

EFFECTIVE DATES: June 28, 1996, except new § 681.12 which is effective on August 5, 1996.

ADDRESSES: Copies of Amendment 9 and the associated environmental assessment may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

A copy of the Biological Opinion (BO) associated with this rule and the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Hilda Diaz-Soltero, Director, Southwest Region, NMFS (Regional Director), 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Send comments on the modifications to approved collection-of-information requirements to the Regional Director and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Paperwork Reduction Project 0648–0204 and 0648–0214, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at (808) 522–8220; Svein Fougner at (310) 980–4034; or Alvin Z. Katekaru at (808) 973–2985.

SUPPLEMENTARY INFORMATION: The FMP was approved in 1983 and governs fishing for spiny and slipper lobsters in the NWHI. The history of the development of the FMP and Amendment 9 is summarized in the proposed rule (61 FR 15452, April 8, 1996) and will not be repeated here.

Amendment 9 includes the following measures, which are explained in more detail in the proposed rule published on April 8, 1996:

1. *Establish an annual harvest guideline based on a constant harvest rate and a specific level of risk of overfishing.* Under the constant harvest rate policy, the harvest guideline, which is expressed in terms of the total number of lobsters (spiny and slipper combined), is proportional to the estimated exploitable population size.

2. *Allow the retention of egg-bearing (''berried'') lobsters and eliminate size limits.* The FMP and implementing regulations currently prohibit fishers from retaining berried lobsters or lobsters with a tail width of less than 50 mm for spiny lobsters and 56 mm for slipper lobsters.

3. *Eliminate the in-season quota adjustment.* The in-season quota adjustment has proven to be unworkable, given the extreme sensitivity of the quota formula to changes in catch-per-unit-of-effort (CPUE). A harvest guideline will be set once annually and will not be adjusted during the year.

4. *Authorize the Regional Director to close the fishery by direct notice to fishermen.* The Council concluded that the fishery is sufficiently small (there are only 15 persons with limited entry permits) that direct notice to permit holders by telephone or radio is feasible and provides the most effective means of ensuring timely closure of the fishery with minimal likelihood of premature or late closure.

5. *Establish broad framework procedures for future regulatory changes.* The FMP currently has framework procedures dealing with protected species conservation, and the annual harvest quota is set under a specific framework (i.e., formula). Amendment 9 authorizes measures affecting the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort, and provides a mechanism to respond to new information quickly.

6. *Conduct a 5-year review of the new program.* The Council is aware that the proposed new management approach of Amendment 9 is an innovative approach to crustacean fishery management and that it warrants a complete review of its effectiveness. This analysis is in addition to the annual review of the fishery.

This rule eliminates the requirement that fishers notify NMFS in advance of plans to embark on each fishing trip so that NMFS may place observers on the fishing vessel. Although the single vessel fishing in 1994 under an Experimental Fishing Permit carried a NMFS observer, NMFS does not anticipate sending observers on lobster trips on a regular basis. Therefore, NMFS removes the requirement to report each trip in advance. This action accords with President Clinton's directive that agencies reduce public reporting requirements.

In compliance with the new procedures of Amendment 9, a harvest guideline of 186,000 lobsters for the NWHI crustacean fishery is announced for the 1996 fishing season, which begins July 1, 1996. This harvest guideline supersedes the initial quota published on February 21, 1996 (61 FR 6577), and is the final landings limit for the 1996 fishing season. The harvest guideline is computed by using a harvest rate associated with a 10 percent risk of overfishing applied to the estimate of the exploitable population. For 1996, the exploitable population is 1,432,586 lobsters.

Comments

Comments were received from the State of Hawaii Department of Land and Natural Resources, the Marine Mammal Commission (MMC), the U.S. Fish and Wildlife Service (USFWS), and the Small Business Administration (SBA). Similar comments have been combined.

Comment: Some comments suggested that NMFS was reopening or resuming the NWHI lobster fishery, implying that the fishery is now closed.

Response: The lobster fishery has been closed only when there was no announced quota or after available quota has been taken. Commercial fishing is allowed under the current system when there are lobsters to be harvested according to the formula contained in the FMP. Without Amendment 9, the fishery would open on July 1, 1996, under a quota system.

Comment: The regulations should require the retention of all small and berried female lobsters. Giving the fishermen no choice would minimize highgrading and would provide more sound information in the sales reports.

Response: This measure was not included by the Council in Amendment 9, so it cannot be implemented at this time. However, NMFS does not expect highgrading to occur because competition for the total number of lobsters set by the harvest guideline will encourage fishermen to keep all lobsters, but NMFS will provide the Council with catch, effort, and sales data to evaluate whether this expectation is realized. The Council has agreed to consider requiring retention if the first year of data demonstrates a need and provides a sound basis for such action.

Comment: A vessel monitoring system (VMS) should be required on each vessel. Such a system would monitor vessel traffic and determine if there were illegal entry to the Hawaiian Islands National Wildlife Refuge (HINWR).

Response: This measure was not included by the Council in Amendment 9, so it cannot be implemented at this time. The Council did not propose the use of VMS because VMS has not been justified to the satisfaction of the Council as being needed in the lobster fishery. The Council has agreed, however, to review the measure in the future within the framework procedures of the amendment.

Comment: Amendment 9 is deficient in its description of the HINWR. It is the USFWS position that the boundaries of the HINWR extend to the 20 fathom isobath around Necker Island and to the 10 fathom isobath around the other

islands of the refuge; and that permits are required for access to the HINWR. The Amendment could lead to the impression that, in the absence of the FMP, fishing would be allowed in the HINWR.

Response: The legal basis for this assertion of jurisdiction over offshore waters was not provided. The original Executive Order designating the HINWR does not indicate that offshore waters are included in the HINWR. The original FMP provides a more complete discussion of management agencies and their authorities in the NWHI, and there is no new information concerning USFWS authority or jurisdiction. The USFWS has been asked to provide to the Council more information concerning HINWR jurisdiction and controls for use in future planning efforts. The original FMP clearly explains that fishing in waters in the HINWR or in state waters is not controlled under the FMP; nothing in Amendment 9 changes that position.

Comment: An area-wide harvest guideline means that specific areas in the Hawaiian Islands chain could be severely depleted of lobster, possibly adversely affecting monk seals.

Response: Due to the lack of scientific data and enforcement resources, bank-by-bank management is not possible at this time. The stock assessment model is conservative, however, and guards against excessive harvests. Historically, most of the harvest has occurred at a small number of locations, and this is likely to continue unless productivity of the lobster stocks returns to the levels of the late 1970's and 1980's. The Council has agreed to evaluate the use of VMS, which could be useful in reporting the catch at sea. Such a system may be able to provide a basis for area specific management in the future.

Comment: Area specific spawning potential ratios (SPR) should be evaluated and used to restrict fishing in areas where it is important to maintain healthy lobster populations.

Response: As stated above, this is not possible at this time. If area-specific management becomes a reality, determining the SPR for individual areas would be a factor to be considered.

Comment: The conclusion that the proposed fishery will not affect Hawaiian monk seals is not supported by the information in Amendment 9 and the biological assessment. The Amendment should include a full discussion of the potential impacts, such as increasing entrapment hazards and decreasing food availability. Also, Amendment 9 does not address the status of monk seals at French Frigate Shoals (FFS), where the seal population is undergoing a severe decline due to starvation. If lobster and octopus are relatively important components of monk seal diets, the proposed lobster fishery could impact monk seals. The MMC recommends closing FFS to lobster fishing until the importance of lobster and octopus in the diets of monk seals is known. Amendment 9 should be disapproved and no fishing allowed until an adequate BO is completed.

Response: There are three records of direct interaction between monk seals and the lobster fishery. One occurred early in the fishery when a seal became entangled in a trap bridle and drowned. The second occurred in 1994, when a fisherman reported that a monk seal approached the vessel and fed on released lobster. In the third, a seal was observed attempting to move a lost trap, presumably in search of food underneath the trap. No reports have been received of dead or live monk seals with scars or injuries that suggest interaction with lobster fishing gear. No interactions have occurred on research cruises. With reduced effort in the fishery, the potential for direct entrapment or harm has greatly declined. There is no information on the number of lost lobster traps and the likelihood that a lost trap would harm a seal, but the maximum allowable size of the trap openings was set with the objective of protecting monk seals.

There may be indirect effects on monk seals from the lobster fishery, especially for the population at FFS, where overall prey availability appears to be low. However, NMFS has concluded that there is insufficient information to support closing waters around FFS at this time. The NMFS Honolulu Laboratory is conducting research on foraging and feeding behavior, as well as on the diet of monk seals through the use of remote video cameras attached to seals and by analyzing seal scats and spewings. Eventually, a better understanding of the relationship between monk seals and their food sources will be available. Amendment 9 recognizes a potential for impacts, but NMFS agreed with the Council's view that there is no basis to determine that impacts are likely. On May 24, 1996, the NMFS Office of Protected Resources issued a BO, under the Endangered Species Act, that concluded that the fishery, as it would be conducted under Amendment 9 and these implementing regulations, is not likely to jeopardize the continued existence of any listed species. The May 24, 1996, BO will be provided to the Council for use in future planning and management decisions.

Comment: The frameworking procedures may not be quick enough to respond effectively to rapidly occurring changes in the proposed fishery, including the implementation of measures to protect monk seals. The procedures should be streamlined to provide for quick action.

Response: Actions cannot be taken until effects of the actions are thoroughly analyzed. The new framework procedures will provide for a proper review, and actions can be taken without amending the plan, which is a much more lengthy process. The ability of the Regional Director to close the fishery by direct notice to fishermen is one of the benefits of the Amendment. Also, the Magnuson Act authorizes NMFS, on behalf of the Secretary, to take emergency action if necessary. Existing regulations in 50 CFR §§ 681.27 and 681.28 also provide authority for NMFS to issue quickly a short-term regulation (10 days to 6 months), specifically in the event of a monk seal mortality that appears related to the fishery.

Comment: Eliminating size limits introduces a strong incentive for highgrading and underreporting, which is to be detected by untested and unconvincing methods.

Response: NMFS expects highgrading to be minimal. The following year's harvest guideline will be adjusted for any identified highgrading following review of landings data through the monitoring system. The relationship between lobster size and price depends on the market, which varies from year to year. There is a market for all lobster, so a fisherman would have to decide whether the vessel's economic return would be sufficiently greater if some lobster were discarded in order to retain others. Competition for the available quota puts pressure on fishermen to catch as many lobsters as possible and return to port before the harvest guideline is reached. Highgrading is more likely to occur when fishing begins, and becomes less likely as the fishery approaches the limit on total harvest established by the annual quota. The fewer vessels harvesting the quota, the greater the possibility that highgrading will occur, depending on the size of the quota. High levels of harvest are required to sustain a lobster operation, and the decision to forego the catch of some lobster in anticipation of a more valuable catch is not a simple decision and not the most likely choice.

If highgrading occurs, it can be detected. Catch and effort reported in logbooks can be compared with historic catch and effort data and with the results of research cruise data from the same year. The specific management response to highgrading will depend on

the extent of the highgrading and the benefits and costs of corrective measures, which can be implemented through the framework process. The Council has agreed to evaluate the degree and effects of highgrading in the first year of the fishery under Amendment 9 to determine if adjustments are necessary.

Comment: The basis for the statement that mandatory escape vents reduce the number of undersized lobsters caught in traps by 50 percent should be stated. NMFS should explain why the percentage of sublegal lobsters in the catch doubled between 1985 and 1994. The increasing percentage of undersized lobsters suggests that the fishery has substantially reduced the number of large, preferred lobsters.

Response: The information on the effectiveness of escape vents was obtained through NMFS research. The most likely explanation for an increase in the percentage of sublegal lobsters caught is that the spatial nature of the fishery has changed. Before 1990, the main fishing areas were Maro Reef and Necker Island. Sublegal and legal spiny lobster inhabit separate areas on Maro Reef; however, they occur together on the fishing grounds at Necker Island. After 1990, fishing effort was targeted primarily on Necker Island, thus increasing the relative proportion of sublegal spiny lobster in the catch.

Comment: Past harvest projections designed to achieve sustainable harvest levels have exceeded sustainable catch levels, and the approach of Amendment 9 is untested.

Response: There have not been errors in projections of sustainable harvest. The in-season adjustment, however, has resulted in very large and unpredictable variations in harvest quotas due to extreme sensitivity to changes in CPUE. For example, in 1994 the initial quota was 200,000 lobsters, but was adjusted down to 20,000 lobsters using data from the first month of fishing and a target CPUE of 1.0 lobster/trap haul. However, the CPUE dropped to only 0.9 lobster/trap haul. The resource has not been overfished, and the resource has grown since a quota system was implemented.

Comment: An explanation should be provided as to why in-season harvest adjustments are administratively cumbersome and how fishery management would be improved by eliminating the measure.

Response: The in-season adjustment caused wide and unpredictable changes in the quotas for the fishery. As a result, it was difficult for permit holders to plan their activities and for NMFS to manage the opening and closing of the fishery in a rational manner. The 1994 experience cited by the reviewer demonstrated that the old quota formula was overly sensitive to very small changes in catch rates, such that a 10 percent change in catch rate led to a 90 percent change in the quota.

Comment: The best way to assess and detect highgrading is through observers.

Response: The FMP provides authority for the Regional Director to place observers on permitted vessels, and observers may be placed if deemed necessary and appropriate. As previously explained, highgrading can be detected without using observers.

Comment: The variability of the constant harvest proposal may force some fishermen out of business and ultimately interfere with the current competitive market structure, or could result in a number of fishermen deciding not to participate. This could result in excessive market power for remaining businesses. Also, a few of the companies could merge or a large business could decide to enter the market if it sees the small harvesters exiting the market. This could adversely affect other small businesses, such as markets and restaurants.

Response: Most of the kinds of prospective problems foreseen by the SBA are also inherent in the current management scheme and would arise if the constant catch alternative were chosen. However, monopolization of the harvesting capacity is not likely given that any single entity may not now hold more than one permit. Both now and under the proposed alternative, it is possible for a large business to enter the fishery. It should be noted that NWHI lobster fishermen are generally unable to set market prices due to the relatively low overall volume of the fishery (the projected average harvest guideline is 288,000 lobsters per year); the strong competition from other sources of lobsters (Australia and Brazil especially); and the limited season (not more than 6 months per year). It seems unlikely, therefore, that a large firm would enter the fishery. It is even more unlikely that any single firm could set prices because of competition from international sources. Neither the fishery in aggregate nor any one participant can affect supply or price in the long run to the extent that the consumer would be impacted. It is expected that the difference in ultimate supply of lobster under either the constant harvest rate or the constant catch approach would not be large enough to affect price or markets. However, as the ''use-or-lose'' provision has been eliminated, greater flexibility is provided to permit holders to decide when (if at all) they want to enter the fishery. They are already free to transfer their permits. Thus the proposed management program should result in the more efficient producers being more likely to participate in the fishery.

Comment: The proposal may affect small businesses by interfering with their ability to make short-term and long-term plans. Since the businesses will have to decide each year about whether or not to operate, the businesses may be apprehensive about making administrative decisions, expanding their fleets, upgrading or repairing vessels, or selecting a product price that is beneficial to the economy. The variable nature of the proposal will discourage long-term business expansion. It may be difficult for the business to obtain capital for long-term projects that may require payment over a number of years.

Response: The concerns expressed are generic to this fishery and would exist if the constant catch alternative were selected. The constant catch alternative does not eliminate variability because any harvest guideline would be based on the exploitable biomass, which fluctuates naturally. Since harvest guidelines must be linked to the biological status of the lobster stocks, the FMP cannot guarantee any particular long-term harvest for the industry, or for a particular vessel or business. Expansion of fleets is not likely given the limit on the number of permits any one entity (defined to include a business) can hold. Most participants in the fishery are active in other fisheries and make a decision each year about whether to go lobster fishing. In fact, the constant catch alternative would more likely discourage some prospective fishermen from entering the lobster fishery. The advantage of the constant harvest rate alternative, to these fishermen, is that some years with very strong recruitment may provide income that they would not expect in average years. It should be noted that the average expected harvest under any of the alternatives with a 10 percent risk level is not likely to be large enough to support a full year—s operation for a large portion of the fleet.

Comment: The constant harvest rate proposal is not the most viable alternative for small businesses. The net present value (NPV) analysis of the alternatives indicated that the constant catch alternative had the highest NPV. The constant catch approach involves less uncertainty, has low overall catch variability, and allows high catch rates. The SBA urges the Council to reconsider its decision and suggests that the Council execute the constant catch alternative.

Response: This reading of Table 7 of the Regulatory Impact Review is correct. However, in the Council's and NMFS' view, the constant harvest rate approach was preferred because it provides higher allowable catches with moderate to high CPUE, and takes greater advantage of years with exceptional lobster production, while still limiting uncertainty and providing full protection to stocks when production is low. While maximizing NPV was considered, tradeoffs were made based on biological and operational considerations, with the constant harvest rate option deemed the optimal strategy. Maximizing NPV was not the sole decision criterion. The Council recognizes that most lobster fishermen are not dependent on the lobster fishery. It is likely that only a few permit holders will be active most years and that most permit holders will not shift from other fisheries to lobster except in years of exceptional production. There would be greater incentive for permit holders to exit the fishery altogether if there were a constant catch approach with a relatively low and fixed harvest limit for a number of years. That is, with no potential for the harvest limit to increase for a period of time, many permit holders would appear more likely to leave the fishery, such that the concerns about the concentration of harvesting capacity and control over markets would be more likely to materialize. The constant harvest rate appears more likely to provide an incentive for potential harvest capacity to be maintained.

Changes From the Proposed Rule

When the harvest guideline is projected to be taken, NMFS will notify fishermen 5 days in advance that further landings are prohibited under § 681.29(b)(3). This is shorter notice than the 7 days provided in the former regulations at § 681.31(c)(4). The delay in prohibiting landings, after fishing for lobster has been prohibited, is intended to allow a minimum number of days for vessels to return to port. In most circumstances lobstermen in the NWHI do not need 7 days to get to port. Seven days notice provides additional time to fish, while weakening NMFS' ability to keep the harvest within the harvest guideline. Five days is sufficient time to get back to port from most areas under normal weather conditions. The requirement is for a minimum number of days and does not preclude NMFS from giving more than 5 days if circumstances warrant. Advance notice may be given by direct notice to fishermen or by publication in the Federal Register.

Classification

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule amends a recordkeeping and reporting requirement, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

This rule includes a reduction in collection-of-information requirements subject to the Paperwork Reduction Act. The current rule, which was approved by the Office of Management and Budget (OMB) under OMB Control No. 0648–0204, requires that permits be renewed annually. Under the final rule, permits are effective until modified, suspended, or revoked. The permit holder must advise NMFS of changes in permit information such as change of ownership or the vessel covered by the permit. The estimated burden decreases from ½ hour per year to ½ hour per 3 years. Vessel owners are no longer required to notify NMFS prior to departing on each fishing trip, a requirement approved under OMB Control No. 0648–0214. This reduces the estimated burden by 5 minutes per vessel per trip, or up to 30 minutes per year. This rule also mentions the daily lobster and sales reports which take 5 minutes to complete, respectively, and have been approved under OMB control number 0648–0214. The total burden is estimated to decrease by about 10 hours per year. Send comments regarding these burden estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing the burden, to the Regional Director and to OMB (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has prepared a FRFA as part of the regulatory impact review, which describes the impact this rule would have on small entities. To the extent that there are impacts, they are expected to be beneficial. Under the proposed harvest guideline, there will likely be fewer years in which the fishery is closed. The increased harvest guideline and reduction in costs may result in a 5 percent or greater increase in gross annual revenues. All vessels in this fishery (15 vessels have permits) are considered small entities. No new reporting, recordkeeping, or compliance requirements are imposed by this rule. No Federal rules are known to duplicate, overlap, or conflict with this rule. The reasons for, objectives of, and legal basis for this rule are described elsewhere in this preamble. Multiple alternatives are analyzed in the FRFA. A copy of the FRFA is available for public review (see **ADDRESSES**).

The Southwest Region, NMFS, completed a formal consultation under section 7 of the ESA to consider the possible impacts of the fishery on Hawaiian monk seals and other listed species and critical habitat. The BO concludes that the fishery under Amendment 9 is not likely to jeopardize the continued existence of the listed species or adversely effect critical habitat within the management area.

The Assistant Administrator finds that under 5 U.S.C. 553(d)(1), this rule (except for § 681.21) is not subject to a 30-day delay in effectiveness date as it relieves restrictions on lobster fishermen. Therefore, except for new § 681.12, which is effective on August 5, 1996, the rule is effective June 28, 1996.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS 0648–204 and 0648–214

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entry ''681.10'', and in the right column the corresponding control number.

50 CFR CHAPTER VI

In § 902.1, paragraph (b), the table, in the entries for 50 CFR in the left column, the following entry and corresponding OMB number are removed: ''681.10''.

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.2, the definitions of ''Final quota'', ''Initial quota'', ''Processing'', ''Processor'', ''Receiving Vessel'', ''Tail width of slipper lobster'', ''Tail width of spiny lobster'', and ''U.S.-harvested lobster'' are removed; the definition of ''Harvest guideline'' is added in alphabetical order, and the definition of ''Slipper lobster'' is revised to read as follows:

§ 681.2 Definitions.

* * * * *

Harvest guideline means a specified numerical harvest objective.

* * * * *

Slipper lobster means any crustacean of the family *Scyllaridae*.

* * * * *

3. In § 681.4, paragraphs (b) (2), (d), and (f) are revised, paragraph (g) is removed, and paragraphs (h) through (l) are redesignated as paragraphs (g) through (k) respectively, to read as follows:

§ 681.4 Permits.

* * * * *

(b) * * *

(2) Each application must be submitted on a Southwest Region Federal Fisheries application form obtained from the Pacific Area Office containing all the necessary information, attachments, certification, signature, and fees.

* * * * *

(d) *Change in application information.* Any change in information on the permit application form submitted under paragraph (b)(2) of this section must be reported to the Pacific Area Office at least 10 days before the effective date of the change. Failure to report such change is a basis for permit sanctions.

* * * * *

(f) *Expiration.* Permits issued under this section will remain valid indefinitely unless transferred, revoked, suspended, or modified under 15 CFR part 904.

* * * * *

4. In § 681.5, paragraphs (b) and (d) are removed, paragraphs (c) and (e) are redesignated as paragraphs (b) and (c) respectively, and paragraph (a) and newly redesignated paragraph (b) are revised to read as follows:

§ 681.5 Recordkeeping and reporting.

(a) *Daily Lobster Catch Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must maintain on board the fishing vessel, while fishing for lobster, an accurate and complete NMFS Daily Lobster Catch Report on a form provided by the Regional Director. All information specified on the form, which has been approved under the Paperwork Reduction Act, must be recorded on the form within 24 hours after the completion of the fishing day. The Daily Lobster Catch Reports for a fishing trip must be submitted to the Regional Director within 72 hours of each landing of lobsters.

(b) *Lobster Sales Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must submit to the Regional Director, within 72 hours of off-loading of lobster, an accurate and complete Lobster Sales Report on a form provided by the Regional Director, and attach packing or weigh-out slips provided to the operator by the first-level buyer(s), unless the packing/weigh-out slips have not been provided in time by the buyer(s). The form, which has been approved under the Paperwork Reduction Act, must be signed and dated by the vessel operator.

* * * * *

5. In § 681.7, paragraphs (a)(5), (b)(2) through (b)(4) are removed, paragraphs (b)(5) through (b)(14) are redesignated as paragraphs (b)(2) through (b)(11) respectively, and paragraphs (b)(1)(i) through (b)(1)(v), newly redesignated paragraphs (b)(6), (b)(7), (b)(9), and (b)(11) are revised to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(1) * * *

(i) Without a limited access permit issued under § 681.28;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 681.22;

(iii) From closed areas for lobsters, as specified in § 681.21;

(iv) During a closed season, as specified in § 681.27; or

(v) After the closure date, as specified in § 681.29(b)(3), and until the fishery opens again in the following calendar year.

* * * * *

(6) Leave a trap unattended in the Management Area except as provided in § 681.22(f).

(7) Maintain on board the vessel or in the water, more than 1200 traps per fishing vessel, of which no more than 1100 can be assembled traps, as specified in § 681.22(e).

* * * * *

(9) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 681.29 (b)(3), until the fishery opens again the following year.

* * * * *

(11) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 681.11(a).

* * * * *

6. Section 681.10 is revised to read as follows:

§ 681.10 Observers.

All fishing vessels subject to this part must carry an observer when requested to do so by the Regional Director.

7. In § 681.11, paragraph (a) introductory text is revised to read as follows:

§ 681.11 Availability of records for inspection.

(a) Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Director, to access, inspect, and copy all records relating to the harvest, sale, or transfer of management unit species taken by vessels that have permits issued under this part or that are otherwise subject to this part, including, but not limited to information concerning:

* * * * *

8. Section 681.12 is added effective (insert 30 days after publication in the Federal Register) to subpart A to read as follows:

§ 681.12 Framework procedures.

(a) *Introduction.* New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Crustaceans

Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedures for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for New Measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council will publicize, including by Federal Register notification, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a Federal Register document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

9. In Subpart B, §§ 681.21 and 681.22 are removed and §§ 681.23 through 681.32 are redesignated as §§ 681.21 through 681.30, respectively.

10. In newly redesignated § 681.25, in paragraphs (b) and (g)(1), the words ''He'' and ''he'' are removed and the words ''The Regional Director'' and ''the Regional Director'' are added in their place, respectively.

11. In newly redesignated § 681.26, in paragraphs (a) introductory text, (b)(1), and (b)(3), the words ''he'', ''He'', and ''He'' are removed and the words ''the Regional Director'', ''The Regional Director'', and ''The Regional Director'' are added in their place, respectively.

12. In newly redesignated § 681.28, paragraphs (b) and (c) are removed, paragraphs (d), (e), and (f) are redesignated as paragraphs (b), (c), and (d), respectively, and paragraphs (a)(8) and newly redesignated paragraph (c) are revised to read as follows:

§ 681.28 Limited access management program.

(a) * * *

(8) A limited entry permit has no fixed expiration date.

* * * * *

(c) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

* * * * *

13. In newly redesignated § 681.29, the section heading is revised, and paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c), and paragraphs (a) and (b) are revised to read as follows:

§ 681.29 Harvest limitation program.

(a) *General.* A harvest guideline for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Director shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources, to establish the annual harvest guideline in accordance with the FMP.

(2) NMFS shall publish a document indicating the annual harvest guideline in the Federal Register by March 31 each year, and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Director shall determine, on the basis of the information reported to NMFS during the open season by the operator of each vessel fishing, when the harvest guideline will be reached. Notice of this determination, with a specification of the closure date after which fishing for lobster or further landings of lobster taken in Permit Area 1 is prohibited, will be provided to each permit holder and operator of each permitted vessel or announced in the Federal Register. At least 5 days advance notice of the effective date of the prohibition on landings will be given.

* * * * *

14. Newly redesignated § 681.30 is revised to read as follows:

§ 681.30 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

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